

EXHIBIT D

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 - - - - - x
4 SECURITIES INVESTOR PROTECTION
5 CORPORATION
6 v. CASE NO. 08-01789-smb
7 BERNARD L. MADOFF INVESTMENT
8 SECURITIES, LLC, et al,
9 Debtors.
10 - - - - - x
11 IRVING H. PICARD, TRUSTEE FOR THE
12 LIQUIDATION OF BERNARD L. MADOFF,
13 Plaintiff, ADV. PROC.
14 v CASE NO. 10-051430-smb
15 MARILYN BERNFELD TRUST, ET AL.,
16 Defendants.
17 - - - - - x
18 IRVING H. PICARD, TRUSTEE FOR THE
19 LIQUIDATION OF BERNARD L. MADOFF,
20 Plaintiff, Adv. Proceeding
21 v CASE NO. 10-05390-smb
22 1096-1100 RIVER ROAD ASSOCIATION,
23 Defendant.
24 - - - - - x
25

1 - - - - - x

2 IRVING H. PICARD, TRUSTEE FOR THE

3 LIQUIDATION OF BERNARD L. MADOFF,

4 Plaintiff, ADV. PROCEEDING

5 v CASE NO. 10-04283-smb

6 MENDELOW, ET AL.,

7 Defendants.

8 - - - - - x

9 IRVING H. PICARD, TRUSTEE FOR THE

10 LIQUIDATION OF BERNARD L. MADOFF,

11 Plaintiff, ADV. PROCEEDING

12 v CASE NO. 10-05286-smb

13 LEGACY CAPITAL, LTD., ET AL.,

14 Defendants.

15 - - - - - x

16 U.S. Bankruptcy Court

17 One Bowling Green

18 New York, New York

19 October 28, 2015

20 10:02 AM

21 B E F O R E :

22 HON. STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: Unidentified

1 Adversary proceeding: 10-05143-smb Irving H. Picard, Trustee
2 for the Liquidation of Bernard L. Madoff Investment
3 Securities LLC, and Bernard L. Madoff v. Marilyn Bernfeld
4 Trust et al Discovery Conference Pursuant to Local
5 Bankruptcy Rule 7007-1(b) (also applies to Adv. P. Nos. 10-
6 5143 & 10-4841)

8 Discovery Conference Pursuant to Local Bankruptcy Rule 7007-
9 1 (b)

11 Adversary proceeding: 10-04283-smb Picard, as Trustee for
12 the Liquidation of Bernard v. Mendelow et al
13 Discovery Conference pursuant to Local Bankruptcy Local
14 7007-1 (b)

16 Defendants' Motion for Judgment on the Pleadings

18 Adversary proceeding: 10-05286-smb Irving H. Picard, Trustee
19 for the Liquidation of Bernard v. Legacy Capital Ltd. et al
20 Defendant Khronos Motion to Dismiss

22 Defendant Legacy Capital's Motion to Dismiss

1 Adversary proceeding: 08-01789-smb Securities Investor
2 Protection Corporation v. Bernard L. Madoff Investment
3 Securities, LLC. et al
4 Trustees Motion and Memorandum to Affirm His Determinations
5 Denying Claims of Claimants' Holding Interests in 1973
6 Masters Vacation Fund, Bull Market Fund, and Strattham
7 Partners
8
9 Adversary proceeding: 10-04283-smb Picard, as Trustee for
10 the Liquidation of Bernard v. Mendelow et al
11 Pre-Trial Conference
12
13 Adversary proceeding: 10-05286-smb Irving H. Picard, Trustee
14 for the Liquidation of Bernard L. Madoff Investment
15 Securities LLC, and Bernard L. Madoff v. Legacy Capital Ltd.
16 et al
17 Pre-Trial Conference
18
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1 THE COURT: We have a couple other discovery
2 issues, though.

3 All right. Yes? Go ahead.

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4      This is -- let's start with Bernfeld.
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5 MS. HOCHMUTH: Yes, Your Honor.

6 THE COURT: Okay. I called your case early. I
7 know you had a flat tire.

8 MR. WEDEEN: I apologize, Judge.

9 THE COURT: No, no. That's all right. But --

10 MR. WEDEEN: I got a flat tire (indiscernible)

11 tow.

12 THE COURT: That's the reason why you got behind
13 some long cases. Go ahead.

14 MS. HOCHMUTH: Thank you, Your Honor.

15 Your Honor, I'm here today on three cases. My
16 name is Farrell Hochmuth of Baker Hostetler on behalf of the
17 plaintiff, Irving Picard. The three cases we're here on is
18 the Marilyn Bernfeld Trust, Michael Bellini and Ellen
19 Bernfeld. These cases -- all of these cases, opposing
20 counsel is Mr. Wedeen.

21 The parties held an initial case conference in
22 June of 2014. There was -- a case management notice was
23 filed in each of the cases requiring initial disclosures by
24 August 27th of 2014. I have requested that counsel provide
25 those initial disclosures numerous times. We have now

1 propounded requests for admission, requests for production
2 and interrogatories. We have not --

3 THE COURT: Is this an innocent investor case?

4 MS. HOCHMUTH: Yes, Your Honor. These are -- all
5 three cases are good faith investors.

6 No responses have been received to any of the
7 discovery. We extended the deadlines based on the request
8 of counsel a couple times. We still don't have discovery
9 responses.

10 Yesterday, I did receive initial disclosures in
11 each of the three cases so we are no longer asking that Your
12 Honor order that those initial disclosures be made. But we
13 are requesting an order deeming the request for admissions
14 admitted pursuant to Federal Rule of Civil Procedure
15 36(a)(3). And we would also seek an order compelling
16 responses to discovery by a date certain in each of the
17 cases.

18 MR. WEDEEN: Judge, once again, I certainly would
19 agree that we need an order compelling discovery. It's just
20 --

21 THE COURT: What about the deemed admissions?

22 MR. WEDEEN: Well -- I was going to get to that,
23 Your Honor. If you'd like me to address it first, I would
24 request an extension of time.

25 THE COURT: Why didn't you answer -- when were

1 they served?

2 MS. HOCHMUTH: Your Honor, the request for
3 admissions --

4 MR. WEDEEN: July

5 MS. HOCHMUTH: -- were served in July of 2015.

6 THE COURT: Okay. So tell me why you weren't able
7 to respond to them?

8 MR. WEDEEN: Your Honor, I've been trying to
9 communicate with my clients. My clients -- once again,
10 Judge, these investors were effectively reduced in state --
11 financial standing significantly with very limited liquid
12 assets. Getting -- none of them are under the senior
13 citizen age. And I've been trying. I did receive
14 ultimately from the Bernfeld defendants, Judge, that's the
15 Marilyn Bernfeld Trust and Ellen Bernfeld. Literally, a few
16 days ago, I received by e-mail responses to the admission
17 requests. I did meet with Ms. Bernfeld, this Ellen
18 Bernfeld, but they were -- it's not properly formatted. I
19 just didn't have a chance to put them together and I didn't
20 want to send over (indiscernible).

21 THE COURT: What about the Bellinis?

22 MR. WEDEEN: The Bellinis, Judge, I have a meeting
23 scheduled with them early next week. If the Court would
24 indulge me and give me two weeks on the admissions and six
25 weeks on the rest. I mean, I would advise the Court

1 regarding the documents. And so, though we did not produce
2 -- although we did not object, the only documents my clients
3 will have -- they're not sophisticated parties, Judge, or
4 information they received from Madoff that they have no
5 doubt -- no. Now go and retrieve and send back to them -- I
6 mean --

7 THE COURT: The account schedules?

8 MR. WEDEEN: Yeah. That's really all they have.

9 THE COURT: What other documents were you seeking?

10 MS. HOCHMUTH: Your Honor, in the Marilyn Bernfeld
11 Trust, there are seven defendants. And they include a joint
12 venture, two partnerships and trusts. So we are seeking
13 trust documents that will help the trustee to determine if
14 there have been subsequent transfers of these. We would
15 like those. We would like customer statements. Any
16 information regarding organizational structure of these
17 entities. If the requests are deemed admitted, which we
18 believe they are by operation of Federal Rule 36, at that
19 point, we would no longer need to do discovery on the
20 initial transfers because we believe that the receipt of the
21 transfers would be proved as a matter of law.

22 THE COURT: Give me the chronology of when you
23 were reminding counsel that he had not responded to the
24 discovery, and specifically, the request for admissions.

25 MS. HOCHMUTH: Absolutely, Your Honor. If I can

1 point you to the letter that we filed on September 28th --

2 THE COURT: Yeah.

3 MS. HOCHMUTH: -- attached to that letter, we have
4 each of the instances in which we've asked counsel to
5 respond to the requests for admission. Initially, it was
6 the e-mail correspondences regarding disclosures.

7 THE COURT: What about the August 6th letter?

8 MS. HOCHMUTH: I have --

9 THE COURT: Does it remind him --

10 MS. HOCHMUTH: Yes, Your Honor. When we sent the
11 --

12 THE COURT: I see. On June --

13 MS. HOCHMUTH: I have here, Your Honor, when we
14 sent -- we sent the request for admission on July 6th. We
15 communicated with counsel as per the letter regarding an
16 extension of time. We did allow counsel -- we're not taking
17 a hard line stance but we didn't agree to extend --

18 THE COURT: What was the extension to?

19 MS. HOCHMUTH: We extended the time -- counsel
20 asked when the responses were due in August that we extend
21 to the end of September. Because of the fact discovery
22 deadline at that time, we agreed to extend it to September
23 4th. We reminded counsel on September 1st that the
24 responses would be due on the 4th and that we looked forward
25 to receiving them. We never did receive them. I have a

1 letter here, September 1st.

2 THE COURT: I see that.

3 MS. HOCHMUTH: That's the final attempt. And then

4 --

5 THE COURT: I see you always had previously
6 written to me about requesting a conference in this case.

7 MS. HOCHMUTH: Actually, what we did -- in that
8 letter of September 1st, we had taken your ruling in the
9 River Road matter where you had discussed deeming requests
10 for admissions and providing that to counsel as a warning.
11 This is three days before these were due saying Judge
12 Bernstein has just ruled in favor of deeming admissions in a
13 case. If you don't do this, you need to do this. This is
14 three days before they were due. And still with that, Your
15 Honor, he didn't respond.

16 MR. WEDEEN: May I respond?

17 THE COURT: Well, let me just -- I just want to
18 understand the number of times you were warned.

19 MR. WEDEEN: Judge, I --

20 THE COURT: Let me just. I don't think she's
21 done. Go ahead.

22 MS. HOCHMUTH: That would be it, Your Honor, is
23 that we gave counsel plenty of notice, three days before
24 they were due, and despite that, and attached to the
25 (indiscernible) hearing -- order.

1 THE COURT: What's the December 4th letter?

2 MS. HOCHMUTH: I'm sorry, Your Honor, on December
3 4 -- Your Honor, December 4th of 2014, this was just in
4 reference at that time to the initial disclosures that had
5 been due as per the case management notices that were filed
6 in each of the cases at the end of August. At this time we
7 had not served additional discovery.

8 We prefer to be able to get disclosures, so that
9 at that time, we can focus our discovery. But when we
10 didn't get those initial disclosures, we eventually said
11 well, let's move forward with this, let's do our discovery.

12 I guess the problem I have, and the question I
13 have is there's a lot of reminders here that you're late,
14 and all you're telling me is your clients are not
15 sophisticated people, but you haven't told me what you did
16 to try and get the information, assuming that's enough,
17 because you're the agent and they're the principal, and they
18 ultimately have to suffer for failure to comply.

19 MR. WEDEEN: May I respond? First, Judge, counsel
20 was very diligent in reminding me; however, the reason I
21 requested until the least the end of September is I was away
22 for the latter part of August and early September with my
23 family. We then returned from the South Pacific and my
24 daughter had pneumonia.

25 I tried to reason with counsel, and say September

1 3rd is Labor Day weekend, that's really not sufficient
2 between having very observant clients and other things I
3 need some time. The response was September 3rd and was told
4 that was it.

5 I was then forwarded these letter with the order
6 in the Davies (ph) matter, I happen to be acquainted with
7 the attorney, Mr. Abramson in that matter. I took a look at
8 the order, and I don't have it in front of me, Your Honor,
9 but if memory serves me, the order you entered gave an
10 extension of time for the notice -- the admissions. And so
11 I assumed that they were saying this is what we're going to
12 ask for, and the short extension of time in the answering
13 notices to admit seemed fair to me --

14 THE COURT: They told you that they weren't going
15 to do it, right?

16 MR. WEDEEN: Right, Judge. But then they said
17 this is the order, this is what we're going to ask for, and
18 this is what the Judge gave us in the very similar case.
19 And in that particular order, Your Honor extended the time
20 to answer the unanswered admissions, if memory serves.

21 THE COURT: So when did you think that your
22 responses were due?

23 MR. WEDEEN: Judge, I thought it was --

24 THE COURT: You just thought it was an open-ended
25 extension?

1 -- what do you have outstanding, document demands, what
2 else?

3 MS. HOCHMUTH: We have a request for production
4 and interrogatories as well, Your Honor.

5 THE COURT: Answer the interrogatories within 30
6 days, and produce all the documents within 30 days. I don't
7 know if you have enough to move for summary judgment or not,
8 but you can make that determination, based on their request
9 for admission, but it's a fictitious profits case, it's --
10 as I said before, there are strict liability cases unless
11 the law changes.

12 So you can submit an order to -- you can submit an
13 order with a consent, not that you consent to the relief,
14 but you consent that the order accurately reflects the
15 disposition of the conference or if not, just
16 (indiscernible) whatever in notice.

17 MS. HOCHMUTH: Yes, Your Honor.

18 THE COURT: Okay.

19 MS. HOCHMUTH: Thank you very much.

20 MR. WEDEEN: Thank you.

21 THE COURT: Pardon?

22 UNIDENTIFIED: (indiscernible)

23 PHONE OPERATOR: Excuse me, Your Honor.

24 THE COURT: Uh-huh.

25 PHONE OPERATOR: This is the operator, may I